

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEVITTA BRISCOE, as executor of the Estate  
of Che Andre Taylor; JOYCE DORSEY,  
individually; CHE ANDRE TAYLOR JR.,  
individually; SARAH SETTLES on behalf of  
her minor child, [REDACTED]  
[REDACTED]; and DEMEKA GREEN for the  
Estate of Brenda Taylor,

Plaintiffs,

v.

CITY OF SEATTLE; MICHAEL  
SPAULDING and "JANE DOE"  
SPAULDING, and their marital community  
composed thereof; SCOTT MILLER and  
"JANE DOE" MILLER, and their marital  
community composed thereof,

Defendants.

NO. 2:18-cv-00262-TSZ

DEFENDANTS' MOTION TO STAY  
PROCEEDINGS PENDING APPELLATE  
RULING ON QUALIFIED IMMUNITY

**Noted for Consideration:  
October 30, 2020**

**I. RELIEF REQUESTED**

Defendants City of Seattle, Michael Spaulding and Scott Miller ("Defendants") respectfully  
request that this Court stay all pre-trial litigation and the trial, pending the Ninth Circuit's decision on  
Officers Spaulding and Miller's interlocutory appeal of this Court's decision denying qualified

DEFENDANTS' MOTION TO STAY  
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1 immunity on plaintiff's Fourth and Fourteenth Amendment claims. The witnesses, evidence, and  
2 arguments relevant to the state law claims against the City and officers overlap to such an extent that  
3 a stay would preserve the interests of judicial efficiency, limit the disruptions two trials might have  
4 on the involved litigants and witnesses, and avoid the risk of inconsistent verdicts.

## 5 II. FACTUAL AND PROCEDURAL BACKGROUND

6 Plaintiffs filed their Amended Complaint on January 3, 2020, asserting the following  
7 causes of action against all defendants: (1) Fourth Amendment false arrest; (2) Fourth Amendment  
8 excessive force claim; (3) Fourteenth Amendment Substantive Due Process claims for deprivation  
9 of familial relationships; (4) negligence; (5) outrage; and (6) discrimination under Washington's  
10 Law Against Discrimination, Title 49.60 RCW. (Amended Complaint, Dkt. #62.) Plaintiffs also  
11 asserted a *Monell* claim for 42 U.S.C. § 1983 municipal liability against the City of Seattle. (*Id.*)

12 On September 1, 2020, this Court entered an order granting in part and denying in part  
13 Defendants' Motion for Summary Judgment. (Order, Dkt. #117.) The Court dismissed the  
14 following claims: all causes of action against Officers Acuesta and Barnes, the *Monell* claim  
15 against the City, Brenda Taylor's and the estate's Fourteenth Amendment claims, and the  
16 discrimination claims. (*Id.*) The Court denied summary judgment with respect to the Fourth and  
17 Fourteenth Amendment claims against Officers Spaulding and Miller, as well as the negligence  
18 and outrage claims against Spaulding, Miller, and the City. (*Id.*)

19 With respect to the Fourth and Fourteenth Amendment claims against Officers Spaulding  
20 and Miller, this Court stated it was not concluding that the officers are not entitled to qualified  
21 immunity, but was instead ruling that factual questions precluded granting it at this stage. (*Id.* at

23.)

On September 15, 2020, Officers Spaulding and Miller filed a motion for reconsideration on the Fourth Amendment false arrest claims and denial of qualified immunity with respect to them. (Dkt. #118). The Court denied that motion on September 17, 2020. (Dkt. #120.) On September 29, 2020, Officers Spaulding and Miller filed a timely notice of appeal of this Court's orders denying qualified immunity. (Dkt. #125.)

In its Order denying reconsideration, this Court also ruled on the parties' motions in limine and ordered the parties to submit a joint status report with respect to their availability for trial and whether they will consent to conducting trial remotely via Zoom. (Dkt. #120.) The parties filed a joint status report with the Court on October 1, 2020. (Dkt. #126.) In it, the parties provided an available trial date of April 19, 2021 and informed the Court that Defendants intention to bring this motion to stay pending the Ninth Circuit's disposition on the appeal. (*Id.*) This Court issued a minute order setting a deadline of October 15, 2020 for filing this motion to stay. (Dkt. #128.)

### III. ISSUE PRESENTED

Whether, in the interest of judicial economy, the Court should stay all proceedings and trial pending the Ninth Circuit's decision on Officers Spaulding and Miller's interlocutory appeal.

### IV. EVIDENCE RELIED UPON

Defendants rely on the pleadings, documents, and evidence already on record with this Court.

### V. ARGUMENT AND AUTHORITIES

A district court's denial of a claim of qualified immunity, to the extent that it turns on an issue

of law, is an immediately appealable “final decision” within the meaning of 28 U.S.C. § 1291.<sup>1</sup> *Mitchell v. Forsyth*, 472 U.S. 551, 527 (1985); *Ames v. King County*, 846 F.3d 340, 347 (9th Cir. 2017). The filing of an immediately appealable interlocutory claim divests the district court of jurisdiction to proceed with trial on that claim; it does not divest the district court of jurisdiction to continue with other phases of the case. *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992); *Plotkin v. Pacific Tel and Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982).

Therefore, the filing of an interlocutory appeal does not automatically stay proceedings in the district court. *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972). Instead, the district court has broad discretion to decide whether a stay is appropriate to “promote economy of time and effort for itself, for counsel, and for litigants.” *Id.* (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)); *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458 1465 (9th Cir. 1983) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.”)

The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The propriety of the stay is dependent upon the circumstances of the particular case, and it exercising its judgment, the court

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<sup>1</sup> While this Court ruled that there are genuine issues of material fact with respect to Mr. Taylor’s actions and the presence of the handgun that precluded summary disposition of the Fourth Amendment claims and qualified immunity, Defendants respectfully submit that the undisputed facts mandate a grant of qualified immunity. Defendants respectfully submit that the factual disputes cited by the Court with respect to the excessive force claim are speculative and do not create a genuine issue for trial. Additionally, as set forth in Defendants’ motion for reconsideration (dkt. #118), Defendants assert the Court erred as a matter of law in holding that probable cause to arrest had gone “stale.” These pure legal issues warrant interlocutory review.

1 should consider “(1) whether the stay applicant has made a strong showing that he is likely to succeed  
 2 on the merits;<sup>2</sup> (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance  
 3 of the stay will substantially injure the other parties interested in the proceeding; and (4) where the  
 4 public interest lies.” *Id.* at 434 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). While the first  
 5 two factors are the most critical, the Ninth Circuit weighs these factors with a “general balancing” or  
 6 “sliding scale” approach, under which “a stronger showing of one element may offset a weaker  
 7 showing of another. *Nken*, 556 U.S. at 434; *Leiva-Perez*, 640 F.3d at 964.

8 The core reason for a stay here is to avoid duplicative and costly trials that pertain to the same  
 9 core facts. Plaintiffs’ outrage and negligence claims require the jury to resolve the same factual issues  
 10 as the Fourth Amendment claims – namely, did the officers reasonably perceive that Che Taylor posed  
 11 an imminent threat of death or serious bodily harm. Defendants have a good faith belief that Officers  
 12 Spaulding and Miller are entitled to qualified immunity. If they prevail on appeal, there will be no  
 13 need for a second trial to resolve the federal claims. However, if this Court’s order stands and the  
 14 officers are not entitled to qualified immunity, then the claims against them will be remanded for trial,  
 15 likely well after the trial on the state law claims has concluded. The Court will then have to set a new  
 16 case schedule and devote all of the same resources to a second trial on the Fourth and Fourteenth  
 17 Amendment claims. A new venire of jurors will have to be empaneled, pre-trial motions will be filed  
 18 and decided, and counsel for Plaintiffs and Defendants will have to prepare for and present a nearly  
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20 <sup>2</sup> The first factor does not require a demonstration that success on appeal is more likely than not; rather, the moving  
 21 party need only show that his or her appeal raises serious legal questions or has a reasonable probability or fair prospect  
 of success. *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011).

identical case, involving the same witnesses and the same evidence. The trials will likely require the testimony from more than fifteen witnesses, including experts whose appearances are costly.<sup>3</sup>

In addition to the inefficiency of two trials, there is also a risk of inconsistent verdicts. If Plaintiffs do not prevail at the first trial, they may still prevail in the second trial on the Fourth and Fourteenth Amendment claims against the officers. If Plaintiffs do prevail at the first trial, they may not prevail at the second, resulting in inconsistent verdicts based on the same facts. Given the relatively short briefing schedule on the appeal, with the officers' opening brief due November 30, 2020, Defendants respectfully requests that this Court stay the proceedings until the Ninth Circuit rules on the issue of qualified immunity.

## VI. CONCLUSION

The principles of judicial economy support a stay in this matter. The expense, burden, and risk of two trials with potentially inconsistent verdicts outweighs any countervailing interests in expeditiously resolving the state law claims. The Court should grant this motion and stay these proceedings until the Ninth Circuit has decided whether the officers are entitled to qualified immunity.

DATED this 15<sup>th</sup> day of October, 2020.

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<sup>3</sup> As set forth in the parties' joint status report, the parties also have a mediation scheduled for December 4, 2020. (Dkt. #126.) The potential for resolution at mediation also supports a stay.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of October, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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